

## SUBCOMMITTEE: CRIMINAL

## HOUSE BILL NO. 618

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patrons Prior to Substitute--Delegates Plum and Kory [HB 488])

A BILL to amend and reenact §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 of the Code of Virginia, relating to hate crimes; gender, disability, gender identity, or sexual orientation; penalty.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-42.1. Civil action for racial, religious, or ethnic harassment, violence or vandalism.**

A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment ~~or~~, (ii) violence directed against his person; or (iii) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, gender, disability, gender identity, sexual orientation, or ethnic animosity.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable ~~attorneys'~~ attorney fees in an amount to be fixed by the court.

C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.

**§ 8.01-49.1. Liability for defamatory material on the Internet.**

A. No provider or user of an interactive computer service on the Internet shall be treated as the publisher or speaker of any information provided to it by another information content provider. No provider or user of an interactive computer service shall be liable for (i) any action voluntarily taken by it in good faith to restrict access to, or availability of, material that the provider or user considers to be

obscene, lewd, lascivious, excessively violent, harassing, or intended to incite hatred on the basis of race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, whether or not such material is constitutionally protected, or (ii) any action taken to enable, or make available to information content providers or others, the technical means to restrict access to information provided by another information content provider.

~~B. Definitions.~~ As used in this section:

"Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Internet" means the international computer network of interoperable packet-switched data networks.

**§ 18.2-57. Assault and battery; penalty.**

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

53 C. In addition, if any person commits an assault or an assault and battery against another knowing  
54 or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as  
55 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care,  
56 treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a  
57 local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in  
58 the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in  
59 the custody of or under the supervision of the Department of Juvenile Justice, an employee or other  
60 individual who provides control, care, or treatment of sexually violent predators committed to the custody  
61 of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-  
62 102, or a volunteer firefighter or any emergency medical services personnel member who is employed by  
63 or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire  
64 department or volunteer emergency medical services agency, regardless of whether a resolution has been  
65 adopted by the governing body of a political subdivision recognizing such firefighters or emergency  
66 medical services personnel as employees, engaged in the performance of his public duties anywhere in  
67 the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such  
68 person shall include a mandatory minimum term of confinement of six months.

69 Nothing in this subsection shall be construed to affect the right of any person charged with a  
70 violation of this section from asserting and presenting evidence in support of any defenses to the charge  
71 that may be available under common law.

72 D. In addition, if any person commits a battery against another knowing or having reason to know  
73 that such other person is a full-time or part-time employee of any public or private elementary or secondary  
74 school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and  
75 the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which  
76 shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a  
77 firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a  
78 mandatory minimum sentence of confinement of six months.

79 E. In addition, any person who commits a battery against another knowing or having reason to  
80 know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the  
81 performance of his duties in a hospital or in an emergency room on the premises of any clinic or other  
82 facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such  
83 person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall  
84 be a mandatory minimum term of confinement.

85 F. As used in this section:

86 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.)  
87 of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

88 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge  
89 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore  
90 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'  
91 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge  
92 of such district court.

93 "Law-enforcement officer" means any full-time or part-time employee of a police department or  
94 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof  
95 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or  
96 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and  
97 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage  
98 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn  
99 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-  
100 217, and any employee with internal investigations authority designated by the Department of Corrections  
101 pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional  
102 correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or  
103 local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and  
104 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan

Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

"School security officer" means the same as that term is defined in § 9.1-101.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

**§ 18.2-121. Entering property of another for purpose of damaging it, etc.**

~~It shall be~~ is unlawful for any person to enter the land, dwelling, outhouse, or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user, or ~~the~~ occupant thereof to use such property free from interference.

Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 1 misdemeanor. However, if a person intentionally selects the property entered because of the race, religious conviction, color, gender, disability, gender identity, sexual orientation, or national origin of the owner, user, or occupant of the property, the person ~~shall be~~ is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

**§ 52-8.5. Reporting hate crimes.**

A. The Superintendent shall establish and maintain within the Department of State Police a central repository for the collection and analysis of information regarding hate crimes and groups and individuals carrying out such acts.

B. State, county, and municipal law-enforcement agencies shall report to the Department all hate crimes occurring in their jurisdictions in a form, time, and manner prescribed by the Superintendent. Such reports shall not be open to public inspection except insofar as the Superintendent shall permit.

C. For purposes of this section, "hate crime" means (i) a criminal act committed against a person or his property with the specific intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin or that is committed for the purpose of restraining that person from exercising his rights under the Constitution or laws of ~~this~~ the Commonwealth or of the United States; (ii) any illegal act directed against any persons or their property because of those persons' race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin; and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or harass any individual or group because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \_\_\_\_\_ for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \_\_\_\_\_ for periods of commitment to the custody of the Department of Juvenile Justice.**

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